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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/814,161

03/22/2001

M. Cynthia Goh

13626

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7590

05/19/2004

DOWELL & DOWELL PC

SUITE 309

1215 JEFFERSON DAVIS HIGHWAY

ARLINGTON, VA 22202

EXAMINER

YANG, NELSON C

ART UNIT

PAPER NUMBER

1641

DATE MAILED: 05/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b>	<b>Application No.</b> 09/814,161	<b>Applicant(s)</b> GOH ET AL.	
	<b>Examiner</b> Nelson Yang	<b>Art Unit</b> 1641	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 23 April 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. **ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).**

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 14-33, 66.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.

9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ *[Signature]*

10. ☐ Other: \_\_\_\_\_

**LONG V. LE**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 1600**

*05/15/04*

Continuation of 5. does NOT place the application in condition for allowance because: the arguments were not found persuasive. In regard to applicant's argument regarding Everhart et al [US 6,060,256], in that Everhart et al relies on the same pattern located at different places along the dipstick, and that Everhart et al looks for the same diffraction pattern caused by different binding to the same pattern but different analyte specific patterns, it should be noted that the claims do not require that the pre-selected patterns to be different, merely that they give rise to diffraction patterns distinct from all other diffraction patterns. There is also no limitations dealing with how the distinct diffraction patterns would be generated (i.e. such as the binding of the target ligand to the receptor). Since Everhart does disclose that the film will produce optical diffraction patterns which differ depending on the reaction of the monolayer with the analyte of interest (column 8, lines 1-7), the prior art would read upon this limitation. Regarding applicant's argument that the method of analysis is different in that applicant's method analyses a single diffraction image to detect the presence of distinctive diffraction patterns contained therein arising if more than one analyte is present which bind to different receptors in different patterns, while Everhart looks for the same diffraction pattern corresponding to a single diffraction pattern one after another, it should be pointed out that Everhart et al teach that each of the films has a different receptive material that is different for different analytes (column 8, lines 30-33). Therefore, since an analyte would have different reactivities and would therefore presumably produce differing optical diffraction patterns in the films, Everhart et al would read upon the instant claims. With respect to applicant's argument regarding Kumar et al [US 5,512,131] that Kumar does not teach pre-selected patterns that give rise to pre-selected diffraction patterns distinct from all other diffraction patterns, Kumar et al teach a method comprising providing a surface with a variety of combinations of different stamping patterns (column 2, lines 3-30). As can be seen in figs 6(a)-6(h), different stamping patterns would produce different diffraction gratings. Furthermore, as applicant points out, Kumar et al teach an assay in which the biosensor is illuminated and a diffraction pattern corresponding with an analyte is observed, which would read upon the instant claims of detection one diffraction pattern. It should be emphasized that the limitations that applicant's have recited would include detecting just one diffraction patterns that is associated with just one analyte binding to an associated pre-selected pattern.